

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9351 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JESINGHBHAI MAGANBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR SAURIN A SHAH for Petitioner
MR HR BHATT ADDL.GOVERNMENT PLEADER
for Respondents

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/04/98

ORAL JUDGEMENT

The petitioner who is detained pursuant to the order of detention dt. 18th October, 1997 passed by the Police Commissioner for the City of Surat under Sec.3(2) of the Gujarat Prevention of Anti-Social Activities Act (for short the 'Act'), calls in question the legality and validity of the detention order preferring this application under Art. 226 of the Constitution of India.

2. Several complaints against the petitioner of the offences punishable under the provisions of the Bombay Prohibition Act came to be filed with different Police Stations. About five complaints were brought to the notice of the Police Commissioner at Surat. Four complaints are lodged with Varachha Police Station and one complaint is lodged with Mahidharpura Police Station. As alleged in all the complaints, the petitioner was found in possession of bottles of foreign liquor, numbers of which is ranging from 8 to 192. When the records of these complaints were perused, the Police Commissioner also found that the petitioner's activities likely to give rise to several hootch, tragedies and general health problems were going to berserk. It was also noticed that to carry on his bootlegging activities smoothly and without any interruption, the petitioner used to give threats to the persons who came in his way. At times, he, wielding lethal weapon he was having, put the persons in fear of instant death or injury and using the force he used to cause people to bend his way. Those who refused, had to meet with dire consequences and were brutally beaten. Not only that but he also used to extort money, using force. The shopkeepers had to pull down their shutters. With weapon when the petitioner ran amoke the crowd, the people used to chevy. In certain area, the people while leaving their houses were under constant tension as violent attack and harassment from the petitioner were not unknown. Unjust demands and putting any one to precarious position were also quite known to the people. No one was naturally willing to side the petitioner, the wrong-doer. The Police Commissioner then preferred to have the statements of certain witnesses, but no one was willing to come forward and make the statement because every one was feeling insecured. When they were persuaded, some showed their willingness but that too after they were assured that about their particulars disclosing their identity would be kept secret. After the statements were recorded, the Police Commissioner could see that the situation had gone to alarming extent and to maintain public order, immediate stern action against the petitioner was necessary. He found that any action if taken under general law falling short, would yield no result. He, therefore, thought that the detention of the petitioner under the Act was the only way out. He, therefore, passed the order in question and getting the petitioner arrested, kept him under detention. Because of that order and the detention of the petitioner, the present application is filed challenging the legality and validity of the order.

3. At the time of hearing, the learned advocates confined to the only point namely the activities of the petitioner even if accepted as they are, will not be injurious, to the public order and the petitioner cannot be branded as dangerous person. Though on several grounds, the order is assailed, but when both the parties have confined to the only point going to the root of the case, I will deal with the same without dwelling upon other grounds raised in this application.

4. Before I deal with the point, the law applicable made clear by the Appex Court in the case of Piyush Kantilal Mehta Versus Commissioner of Police, Ahmedabad City and Another, AIR 1989 SC 491, may be stated. What is held by the Appex Court is that even if the detenu is held to be the bootlegger, within the meaning of Sec.2(b) of the Act, he can not be detained under the Act unless his activities as bootlegger affect adversely, or are likely to be affected adversely to the maintenance of public order. A person may be fierce by nature but his activities so long as do not affect the public generally, the question of public order will not arise. There must be the material to show that there has been a feeling of insecurity amongst the general public, or it must be shown that the acts of the person create panic or fear in the minds of public upsetting the tempo of the life of the community. Few incidents or minor incidents of use of force or violence or illegal sale of liquor cannot be the ground to hold that the person is indulging in anti-social & nefarious or subversive activities. Keeping a knife or revolver or the fact that the petitioner is fierce by nature, or a head-strong person, or some times, he picks up a fight, or abuses, or bickers, or that he does not afraid of the Police, will not justify to describe him a dangerous person or that his activities are subversive & nefarious falling within the four corners of anti-social activities. If he was threatening or by force causing the people to help or assist him in his such illegal activities, would not always create any feeling of insecurity or panic or terror in the minds of the members of the public or in the area giving rise to the question of maintenance of public order. In that case, therefore the order of detention was not upheld.

5. In this case, it appears that the petitioner has indulged in bootlegging activities. He is dealing in liquor and providing liquor to the different agencies or customers, despite the Bombay Prohibition Act is in force, but his bootlegging activities has not affected the public order, or there is nothing giving rise to a

reasonable belief that his activities are the challenge to the maintenance of public order. If he is of fierce in nature but so long as his activities do not affect the maintenance of public order, the same would not be covered within the meaning of Sec.2(b) of the act. To cover him accordingly, there is no sufficient material on record. He might have, at times, threatened the witnesses or beaten some of the persons but such minor incidents, as held by the Supreme Court in the case of Piyush Mehta (supra), would not be sufficient to brand the petitioner as dangerous person or a bootlegger within the meaning of Sec.2(b) of the Act. In view of the fact, the order of detention passed against the petitioner is required to be quashed.

6. For the aforesaid reason, this application is allowed. The order of detention dt. 18th October, 1997 passed by the Police Commissioner for the city of Surat is hereby quashed and set aside and the petitioner -detenu is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute. Direct service is permitted.

Date: 03/04/1998. -----

(ccs)